

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RONALD W. FORAKER,	§
	§ No. 498, 2011
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware, in and
	§ for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0804004765
	§
Plaintiff Below-	§
Appellee.	§

Submitted: November 23, 2011

Decided: December 13, 2011

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 13th day of December 2011, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Ronald W. Foraker, filed an appeal from the Superior Court’s August 16, 2011 violation of probation (“VOP”) sentencing order. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court’s judgment on the ground that it is manifest on

the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) The record before us reflects that, in May 2008, Foraker, a sex offender, pleaded guilty to Loitering Within 500 Feet of a School. He was sentenced to 2 years of Level V incarceration, to be suspended for 1 year of Level III probation. In January 2009, Foraker was found to have committed a VOP. He was sentenced to 2 years at Level V, to be suspended after successful completion of the Key Program for 1 year at Level IV Residential Substance Abuse Treatment, followed by 1 year of Level III Aftercare. Foraker also was sentenced to 17 months at Level V and the Key Program for failing to re-register as a sex offender.

(3) On August 16, 2009, following a hearing, the Superior Court again found that Foraker had committed a violation of the probationary portion of his loitering sentence. Foraker was sentenced to 18 months at Level V, with credit for 26 days previously served, to be suspended after 6 months for 1 year of Level IV Work Release, followed by 6 months at Level III probation.

(4) In this appeal from the Superior Court's latest VOP sentencing order, Foraker claims that a) his public defender provided ineffective

¹ Supr. Ct. R. 25(a).

assistance at the VOP hearing; b) his probation officer testified falsely at the hearing that he had violated his probation; and c) he has a medical condition that warrants a lesser VOP sentence.

(5) Brooks' first claim is that his counsel provided ineffective assistance at his VOP hearing. This Court will not consider an ineffective assistance of counsel claim on direct appeal that has not been fully adjudicated by the trial court.² Brooks did not present his ineffectiveness claim to the Superior Court in the first instance. Therefore, we decline to address it for the first time in this direct appeal.

(6) Brooks' second claim is that his probation officer presented false testimony at the VOP hearing. It is the responsibility of the appellant, even if representing himself, to provide a copy of the hearing transcript as factual support for his claim.³ The record reflects that Brooks failed to request a copy of the VOP hearing transcript. That failure precludes appellate review of his claim regarding his probation officer's testimony.⁴

(7) Brooks' third, and final, claim is that, because of a surgical procedure, he should have received a lesser VOP sentence. To the extent that Brooks argues that the Superior Court judge abused his discretion in

² *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).

³ *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987).

⁴ *Id.*

imposing sentence, that argument will not be addressed due to Brooks' failure to provide the VOP hearing transcript.⁵ To the extent that Brooks argues that his sentence is illegal, we conclude that any such claim is without merit because Brooks has presented no evidence, nor has he even argued, that his VOP sentence exceeded the amount of Level V time remaining on his loitering sentence.⁶

(8) It is manifest on the face of the appellant's opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁵ Id.

⁶ Del. Code Ann. tit. 11, §4334(c); *State v. Sloman*, 886 A.2d 1257, 1260 (Del. 2005).